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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JAMES BENNETT,  
12 CDCR #F-02704,

13 Plaintiff,

14 vs.

15 WYETH PHARMACEUTICALS;  
16 AURORA BHC; LINDA BARNETT

16 Defendants.

Civil No. 09cv0790 IEG (WMc)

**ORDER SUA SPONTE  
DISMISSING FIRST AMENDED  
COMPLAINT FOR FAILING  
TO STATE A CLAIM  
PURSUANT TO  
28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

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19 **I.**

20 **PROCEDURAL HISTORY**

21 On June 2, 2009, James Bruce Bennett ("Plaintiff"), a state prisoner currently incarcerated  
22 at Avenal State Prison located in Avenal, California and proceeding pro se, filed a civil rights  
23 action filed pursuant to 42 U.S.C. § 1983. Plaintiff also filed a Motion to Proceed *In Forma*  
24 *Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2]. In his original Complaint  
25 Plaintiff alleged that he was forced to take medication manufactured by Wyeth Pharmaceuticals  
26 that triggered a "manic reaction" by Plaintiff. (*See* orig. Compl. at 3.)

27 The Court granted Plaintiff's Motion to Proceed IFP but simultaneously dismissed his  
28 Complaint for failing to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b). *See*

June 2, 2009 Order at 5-6. Plaintiff was granted leave to file a First Amended Complaint in order to correct the deficiencies of pleading identified by the Court. *Id.* at 6. On July 2, 2009, Plaintiff filed his First Amended Complaint (“FAC”).

## II.

### SUA SPONTE SCREENING PER 28 U.S.C. §§ 1915(e)(2) & 1915A

As the Court stated in its previous Order, the Prison Litigation Reform Act (“PLRA”) obligates the Court to review complaints filed by all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these provisions, the Court must sua sponte dismiss any IFP or prisoner complaint, or any portion thereof, which is frivolous, malicious, fails to state a claim, or which seeks damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

#### A. 42 U.S.C. § 1983

Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person acting under color of state law committed the conduct at issue, and (2) that the conduct deprived the claimant of some right, privilege, or immunity protected by the Constitution or laws of the United States. *See* 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

#### B. Private Parties

Plaintiff is seeking to hold Defendant Wyeth Pharmaceutical and Aurora Behavioral Health Care, a private rehabilitation facility, liable for an adverse drug reaction. Specifically Plaintiff alleges that the drug “Effexor” caused him to have a “mania, psychosis, rage” which led to Plaintiff assaulting Linda Barnett. (*See* FAC at 4-5.)

1 Plaintiff was informed in the Court's June 2, 2009 Order that he must allege facts from  
2 which the Court could find that the Defendants were acting "under color of state law." (*See* June  
3 2, 2009 Order at 4; citing *See* 42 U.S.C. § 1983, 28 U.S.C. § 1915(e)(2)(B)(ii)). Private parties  
4 do not generally act under color of state law; thus, "purely private conduct, no matter how  
5 wrongful, is not within the protective orbit of section 1983." *Ouzts v. Maryland Nat'l Ins. Co.*,  
6 505 F.2d 547, 550 (9th Cir. 1974); *see also Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir.  
7 1991).

8 While a plaintiff may seek to hold a private actor liable under section 1983, he must  
9 allege facts that show some "state involvement which directly or indirectly promoted the  
10 challenged conduct." *Ouzts*, 505 F.2d at 553; *West v. Atkins*, 457 U.S. 42, 49, 54 (1988);  
11 *Johnson v. Knowles*, 113 F.3d 1114, 1118-1120 (9th Cir. 1997). In other words, Plaintiff must  
12 show that the private actor's conduct is "fairly attributable" to the state. *Rendell-Baker*, 457 U.S.  
13 at 838; *see also Vincent v. Trend Western Technical Corp.*, 828 F.2d 563, 567 (9th Cir. 1987).  
14 Plaintiff appears to attempt to allege state action on the part of the Defendants by claiming that  
15 these entities receive funds from the State of California and Federal Government. (*See* FAC at  
16 2.) However, these facts alone simply do not rise to the level of state involvement that is  
17 required to find these private entities liable under § 1983 for the alleged violation of Plaintiff's  
18 constitutional rights.

19 Accordingly, the Court DISMISSES Plaintiff's First Amended Complaint, without leave  
20 to amend, for failing to state a claim upon which § 1983 relief can be granted pursuant to 28  
21 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). *See Lopez*, 203 F.3d at 1126-27; *Resnick*, 213 F.3d at  
22 446.

### 23 III.

#### 24 CONCLUSION AND ORDER


25 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

26 Plaintiff's First Amended Complaint is **DISMISSED** for failing to state a claim upon  
27 which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b). Moreover,  
28 because the Court finds amendment of Plaintiff's § 1983 claims would be futile at this time,

1 leave to amend is **DENIED**. See *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir.  
2 1996) (denial of a leave to amend is not an abuse of discretion where further amendment would  
3 be futile); see also *Robinson v. California Bd. of Prison Terms*, 997 F. Supp. 1303, 1308 (C.D.  
4 Cal. 1998) (“Since plaintiff has not, and cannot, state a claim containing an arguable basis in  
5 law, this action should be dismissed without leave to amend; any amendment would be futile.”)  
6 (citing *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996)).

7 The Clerk of Court shall close the file.

8 **DATED: July 15, 2009**

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10 **IRMA E. GONZALEZ, Chief Judge**  
11 **United States District Court**  
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